1941

File No. Official Trustees II/41

Legal **DEPARTMENT**

B **BRANCH**

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Subject:—

Rules and Notifications under the Official Trustees Act 1913

P/6

File No. Official Trustees II/41

Std. Sectt. Slip 24 B. e.

483-B

[redacted]

Legal Department File No X. Official Trustees II/41

Sr. No.	Compilation No.	Subject	Pages
		Rules & Notifications under the Official Trustees Act.1913.	
(1)	C.No. [redacted] 17-11-1 41.	Sections 7(6), 7(7), 7(4) 32 and Rule 6 & draft Pamphlet under.	1...6.

1714

11.9.41.

Office of the H.L.A.

Subject to the following remarks the ~~draft~~ the draft Pamphlet appears to state the legal position correctly:

Official Trustee:

Para.8(2) .- Under sub-section (6) of sction 7 of the Official Trustees Act, 1913, it is necessary that the Official Trustee should be appointed sole executor of , and sole trustee under the will of a deceased person. The word "should "in line 4 has therefore ben correctly used by the Official Trustee and should not be replaced by the word "can" as proposed by H.D.

2. Para.8(4).- The word "original" may be inserted after the word "extraordinary".

3.- Para9.- Under section 7(6) of the Act the Official Trustee shall not administer he estate of a deceased person unless he is expressly appointed sole executor of, and sole trustee under, the will of such person. Under section 7(7) the Official Trustee shall always be the sole trustee and it shall not be lawful to appoint the Official Trustee to be trustee along with any other person . It follows from those provisions that the Official Trustee can be appointed as a sole executor of and sole trustee under a will or a sole trustee under a deed of trust or a will, but he cannot be appointed only as a sole executor. The amendment proposed to be made in the second sentence in para.9 by theinsertion of the word "or " below the word "and " would however mean that the Officail Trustee can also be appointed only as a sole executor of a will. As this would not be the correct position, the word "or " which it is proposed to be inserted bellow t eword "and" may be omitted. The sentence may be

revised as follows:-

"He must be appointed the sole executor of and sole trustee under a will or a sole trustee under a will or deed of trust."

4. Para.14(b).- The expression "A trust of any estate" used in this Para. is in accordance with the wording of ~~Official Trustee has to take the previous~~ section 7(4) of ~~the~~ the Act and as such it is not necessary to omit the words "of any estate " as proposed.

5. Para.21 :- The para. as worded will mean that the Official Trustee has to take the previous sanction of Government for charging a special fee in exceptionally trouble some cases . But under rule 6 of the Official Trustee (Bombay) Rules, 1922, no such sanction is required under rule 6A for the remission of fees. Sub-para.1 of para.21 may therefore be revised as follows:-

"The Official Trustee has power to charge a special fee in cases in which the duties involved are exceptionally onerous and with the previous sanction of the Government to remit in Part or wholly the fees in exceptionally simple cases or where the trust is made for charitable purposes or for an object of general public utility."

6. H.D. should consider whether reference should be made in the Pamphlet to section 6 of the Married Women's Property Act, 1874, under which sums payable under certain policies of insurance are to be paid to and to be held in trust by the Official Trustee.

The Administrator General:

7. Para.4(1).- This may be shortened as shown in pencil on page 2.

8. Para.5(4).- The note to this para. may be revised as follows on the lines of he definition in section 2(2) of the

Administrator General's Act:-

"Note :- An exempted person means an Indian Christian, a Hindu, Muhammadan, Parsi or Buddhist or a person exempted by the Provincial Government under sub-section (1) of section 3 of the Indian Succession Act, 1925, from the operation of that Act."

9. Para.6(5):- Under section 32 of the Act read with section 31 the estate which the Administrator General may administer without letters of administration cannot exceed in the whole two thousand rupees in value. Therefore in line 6 of this para. for the words " below Rs. 1,000/- invalue the words "not exceeding in value Rs. 2,000/- "may be substituted. Similarly under section 32 the Administrator General can grant certificates not only when the deceased exempted person has left assets within the ordinary original civil jurisdiction of the High Court but also within any area notified by the Government in this behalf in the Official Gazette. The words "or within any area notified by the Government in this behalf in the Official Gazette" may therefore be added to the paragraph at the end.

10. Para.6(2):- In line 3 the words " ordinary original civil" may be inserted before the word " jurisdiction."

Sd/- P.N.P.
dt. 10/11
O.C.
Superintendent of Legal Affairs.

U.O. to H.L.C. , No 9839 , dated the 17th November 1941.

L.V.H.
10/4/56.